



## State of Utah

### Department of Natural Resources

MICHAEL R. STYLER  
*Executive Director*

### Division of Oil, Gas & Mining

JOHN R. BAZA  
*Division Director*

JON M. HUNTSMAN, JR.  
*Governor*

GARY R. HERBERT  
*Lieutenant Governor*

October 21, 2005

CERTIFIED RETURN RECEIPT  
7002 0510 0003 8603 2984

Gary Burningham  
Burningham Enterprises  
95 North 200 East  
P.O. Box 974  
American Fork, Utah 84003

Subject: Reassessment, Cessation Order MC-05-02-01(1), Burningham  
Enterprises, Mammoth Ridge #1, S/017/048, Garfield County, Utah

Dear Mr. Burningham:

The proposed civil penalty assessment for the above referenced cessation order was sent to you on September 13, 2005. At that time the abatement had not been completed and some of the facts surrounding the violation were not available. In accordance with rule R647-7-105, the penalty is to be "reassessed" when it is necessary to consider facts which were not reasonably available on the date of the issuance of the proposed assessment. Following is the reassessment of the penalty for the cessation order which has now been terminated:

- MC-05-02-01(1)– Violation 1 of 1 \$528

The enclosed worksheet specifically outlines how the violation was reassessed. Even though the violation has now been terminated, you are still required to pay the penalty.

Under R647-7-106, there are two informal appeal options available to you:

1. If you wish to informally appeal the fact of the Cessation Order, you should file a written request for an Informal Conference within thirty (30) days of receipt of this letter. This conference will be conducted by the Division Director or Associate Director. This Informal


Gary Burningham  
Page 2 of 2  
S/017/048  
October 21, 2005

Conference is distinct from the Assessment Conference regarding the proposed penalty.

2. If you wish to review the penalty assessment, you should file a written request for an Assessment Conference within thirty (30) days of receipt of this letter. If you are also requesting a review of the fact of violation, as noted in paragraph one, the assessment conference will be scheduled immediately following that review.

**If a timely request for review is not made, the fact of the cessation order will stand, the reassessed penalty(ies) will become final, and the penalty(ies) will be due and payable within thirty (30) days of the reassessment. Please remit payment to the Division, mail c/o Vickie Southwick.**

Sincerely,



Daron R. Haddock  
Assessment Officer

DRH:jb  
Enclosure: Worksheets  
cc: Vicki Bailey, Accounting  
Vickie Southwick, DOGM  
O:\M017-Garfield\S0170048-MammothRidge1\non-compliance\ReAssessmentCO.doc



PROBABILITY

RANGE

None

0

Unlikely

1-9

Likely

10-19

Occurred

20

**ASSIGN PROBABILITY OF OCCURRENCE POINTS 20**

**PROVIDE AN EXPLANATION OF POINTS:**

\*\*\* *An Operator is required to obtain a lease or right-of-entry prior to conducting mining operations. Approximately 5 acres has been disturbed at this location without having the appropriate approval. While the Operator has filed a small mine notice of intent he cannot conduct mining operations without having the right of entry. The Operator has created a five-acre disturbance, which includes a small pit, a stockpile/crusher-screening area and a small waste storage area. Disturbance has actually occurred.*

3. What is the extent of actual or potential damage?

RANGE 0-25

In assigning points, consider the duration and extent of said damage or impact, in terms of area and impact on the public or environment.

**ASSIGN DAMAGE POINTS 8**

**PROVIDE AN EXPLANATION OF POINTS:**

\*\*\* *The inspector stated that the operator has disturbed approximately 5 acres of land that had not been approved for disturbance. The damage was the creation of a 5 acre mining disturbance within an area that the operator did not have a lease. The pit at this time is not deep and there is sufficient material at the site that can be used to reclaim the pit area. Growth material was saved prior to the excavation of the pit that can be used to facilitate the revegetation effort. Further discussion with the inspector revealed that the damage is probably temporary. While much of the soil and vegetation have been disturbed, the site could still be reclaimed. While the damage is extensive over the 5 acres, it probably does not leave the site. Damage is assessed in the lower 1/3 of the range.*

**B. ADMINISTRATIVE VIOLATIONS (Max 25pts)**

1. Is this a POTENTIAL or ACTUAL hindrance to enforcement? \_\_\_\_\_

RANGE 0-25

Assign points based on the extent to which enforcement is actually or potentially hindered by the violation.

**ASSIGN HINDRANCE POINTS \_\_\_\_\_**

**PROVIDE AN EXPLANATION OF POINTS:**

\*\*\*

**TOTAL SERIOUSNESS POINTS (A or B) 28**

**III. DEGREE OF FAULT (Max 30 pts.) (R647-7-103.2.13)**

A. Was this an inadvertent violation which was unavoidable by the exercise of reasonable care? IF SO--NO NEGLIGENCE; or, was this a failure of a permittee to prevent the occurrence of a violation due to indifference lack of diligence, or lack of reasonable care, the failure to abate any violation due to the same or was economic gain realized by the permittee? IF SO--GREATER DEGREE OF FAULT THAN NEGLIGENCE.

No Negligence	0
Negligence	1-15
Greater Degree of Fault	16-30

STATE DEGREE OF NEGLIGENCE Negligence

ASSIGN NEGLIGENCE POINTS 8

**PROVIDE AN EXPLANATION OF POINTS:**

\*\*\* *The inspector indicated that the violation was the result of the Operator not taking reasonable care in securing right of entry to the property. They had been in contact with the Landowner (SITLA) but were confused about the area that they had applied for. This indicates indifference to the rules or lack of reasonable care. A prudent operator would understand the need to keep within the approved boundaries and obtain the right of entry prior to disturbing an area. The Operator was negligent in this regard, thus the assignment of points in the middle part of the negligence range.*

**IV. GOOD FAITH (Max 20 pts.) (R467-7-103.2.14)**

(Either A or B) (Does not apply to violations requiring no abatement measures)

A. Did the operator have onsite, the resources necessary to achieve compliance of the violated standard within the permit area?

IF SO--EASY ABATEMENT

Easy Abatement Situation

- Immediate Compliance -11 to -20\*

(Immediately following the issuance of the NOV)

- Rapid Compliance -1 to -10

(Permittee used diligence to abate the violation)

- Normal Compliance 0

(Operator complied within the abatement period required)

(Operator complied with condition and/or terms of approved Mining and Reclamation Plan)

\*Assign in upper of lower half of range depending on abatement occurring the 1st or 2nd half of abatement period.

B. Did the permittee not have the resources at hand to achieve compliance, or does the situation require the submission of plans prior to physical activity to achieve compliance?

IF SO--DIFFICULT ABATEMENT

Difficult Abatement Situation

- Rapid Compliance -11 to -20\*

(Permittee used diligence to abate the violation)

- Normal Compliance -1 to -10\*

(Operator complied within the abatement period required)

- Extended Compliance 0

(Permittee took minimal actions for abatement to stay within the limits of the NOV or the violated standard of the plan submitted for abatement was incomplete)

(Permittee complied with conditions and/or terms of approved Mining and Reclamation Plan)

EASY OR DIFFICULT ABATEMENT? Difficult

ASSIGN GOOD FAITH POINTS 12

PROVIDE AN EXPLANATION OF POINTS:

\*\*\* *The abatement for this violation is considered difficult because it required plans to be submitted. The abatement required a lease to be obtained through School and Institutional Trust Lands Administration. The abatement period was set at October 21, 2005. The operator was considered somewhat diligent in achieving compliance because of the coordination that was required. The required lease was obtained and submitted to the Division and the abatement was considered complete on October 18, 2005. This was a little ahead of the October 21<sup>st</sup> deadline. Twelve good faith points are awarded which is in the rapid compliance range.*

V. ASSESSMENT SUMMARY (R647-7-103.3)

NOTICE OF VIOLATION # <u>MC-05-02-01(1)</u>	
I. TOTAL HISTORY POINTS	<u>0</u>
II. TOTAL SERIOUSNESS POINTS	<u>28</u>
III. TOTAL NEGLIGENCE POINTS	<u>8</u>
IV. TOTAL GOOD FAITH POINTS	<u>-12</u>
TOTAL ASSESSED POINTS	<u>24</u>
 TOTAL ASSESSED FINE	 <u>\$528</u>